IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.3713 of 2005

Mr.R.M.Khan — Petitioner
Vs.
State of Maharashtra & ors. — Respondents

Mr.P.B.Shah for petitioner.

Mr.A.A.Kumbhakoni, Associate Advocate General with Mrs.M.P.Thakur, AGP for Respondents.

CORAM: B.H.MARLAPALLE & NARESH H.PATIL,JJ.

September 12, 2006.

ORAL ORDER:

1. The petitioner who was Ad-hoc Additional District and Additional Sessions Judge has filed this writ petition under Article 226 of the Constitution challenging the order of compulsory retirement dated 10/6/2004, by way of punishment.

2. The petitioner came to be appointed as the Police Prosecutor initially and worked in the said post from 12/8/1983 to 30/6/1984 and he was appointed as a Civil Judge Junior Division and JMFC on 5th July 1984. He came to be promoted as Civil Judge, Senior Division in the year 1995 and in the year 2000 he was further promoted as Ad-hoc Additional District and Additional Sessions Judge. He claims that his

disposal was noteworthy, his record of service was clean and there was no slur on his service career at any time during his entire service of about 18 to 19 years.

3. On 4/3/2003 there was an incident in respect of which the petitioner was charge-sheeted. It was alleged that he called Shri S.R.Jagtap, Civil Judge, Junior Division and JMFC (the complainant for short) and posted at the Pune Municipal Corporation Court at the relevant time, to his chamber and pressurised him to pass order in favour of the plaintiffs in an application filed for temporary injunction in Regular Civil Suit No.325 of 2003. The complainant applied for transfer of the said Suit on 20/3/2003 after he rejected the application for temporary injunction at Exhibit 5 on 13/3/2003, to the learned District Judge who in turn caused an investigation / enquiry and submitted a report to this Court on or about 21/3/2003. The petitioner was issued a charge-sheet on 16/7/2003 and statement of imputations and other documents were provided along with the list of documents. A departmental enquiry was conducted into the said charges and the Enquiry Officer Shri S.M. Shembole submitted his report holding that the

charges levelled against the petitioner were duly proved. In the mean while the petitioner was placed under suspension by the order dated 12th September 2003. The report of the Enquiry Officer was placed before the Disciplinary Committee on 25th February 2004 wherein it was decided to issue a show cause notice to the petitioner proposing major penalty including dismissal from service as prescribed under Rule 5(1) (vii) to (ix) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. Accordingly show cause notice dated 11th March 2004 was issued and the same was replied to by the petitioner on 29/3/2004. The Disciplinary Committee in its meeting held on 28/4/2004 considered the representation of the petitioner and decided to recommend a major penalty of compulsory retirement from service as prescribed under Rule 5(1)(vii) of the Discipline and Appeal Rules, 1979. In accordance with the said decision the Registrar General of the High Court, Appellate Side addressed a letter to the Principal Secretary and RLA, Government of Maharashtra, Law & Judiciary Department on 10th May 2004 and consequently the impugned order of punishment came to be passed and it was served on the petitioner on 11th June 2004.

4. Mr.Shah, the learned counsel for the petitioner urged before us that the findings of the Enquiry Officer are perverse, there was no evidence worth considering in support of the charge and the findings of the Enquiry Officer are mere conjectures and surmises. As per the petitioner the Enquiry Officer was strongly influenced by the preliminary report submitted by the learned District Judge on or about 21/3/2003 and without examining the said learned Judge in the departmental enquiry, his preliminary findings have been made as the basis for holding the petitioner guilty of the charges levelled against him. The learned counsel also pointed out that the evidence in defence adduced by the petitioner through the oral testimony of Mr.Kazi, the In-charge District Judge at the relevant time, Mr.Mali, the learned Advocate for the plaintiffs and Mr.Shinde, the learned Advocate for the defendant no.1, in addition to the oral depositions of the petitioner himself was not at all considered and it was submitted that the Enquiry Officer instead of holding Mr.Jagtap guilty of dereliction in duty or/and dishonesty, held the charges levelled against the petitioner to have been proved and more so

without any evidence. Mr.Shah also referred to the findings of the Enquiry Officer and pointed out that the admission of the Enquiry Officer that the Hon'ble Judges whose names were allegedly taken by the petitioner were not Muslims and, therefore, there was no question of the petitioner conveying a message of these Hon'ble Judges to Mr.Jagtap stating that the plaintiffs were related to any of these Hon'ble Judges. It was also urged that failure to examine Mr.R.C. Chavan, the then learned District Judge (at present an Hon'ble Judge of this Court) and Mr.S.P.Deshmukh, Addl. District Judge vitiated the enquiry.

5. On the other hand Mr.Kumbhakoni, the learned Associate Advocate General with Mrs.Thakur, the learned AGP appearing for the respondents has supported the impugned order of punishment. The charge against the petitioner reads thus:

> "That you on 4.3.2003, by misusing your position as senior Judicial Officer at Pune, called Shri S.R.Jagtap, Civil Judge, J.D. and J.M.F.C. (P.M.C.) Pune in your chamber at 2.00 p.m. and pressurized him to decide

Temporary injunction application in R.C.S. No.325/2003 in favour of the plaintiffs, by falsely representing him (Shri Jagtap) that you have received messages from Hon'ble Shri Justice A.B. Palkar and District Judge Shri Ranade to the effect that the plaintiffs in the said suit R.C.S. No.325/2003 are their relatives and you have insisted Shri Jagtap to grant relief of Temporary injunction in favour of the plaintiffs and thereby you have caused interference in the judicial proceeding pending on the file of Shri S.R. Jagtap.

That your above said act of commission and omission (detailed particulars regarding which can be seen from the statement of imputations supplied herewith) interfering in the judicial proceedings R.C.S. No.325/2003 pending on the file of Shri Jagtap amounted to misconduct and unbecoming of Judicial Officer."

. In the Departmental Enquiry ordered as per the order dated 12th September 2003 the witnesses examined in support of the charge were Shri S.R. Jagtap, Civil Judge, Junior Division and JMFC,

Mrs.Nutan Divakar Khole, Steno attached to the Court of Mr.Jagtap, Mr.Ashok Laxman Rawalkar (Peon attached to the Court of the petitioner), whereas the petitioner examined himself and other three witnesses as stated hereinabove. The issues framed and the respective findings recorded by the Enquiry Officer are as under:

(1) Whether it is proved that on 4.3.2003 at 2.00 P.M. delinquent Mr.R.M. Khan called to Mr.S.R. Jagtap, Civil Judge, Junior Division (P.M.C.) Court, Pune to his chamber and told that he received a message from Hon'ble Shri Justice A.B. Palkar and District Judge Shri Ranade to the effect that the plaintiffs in R.C.S. No.325 of 2003 are their relatives and they desire that relief of temporary injunction be granted in favour of the plaintiffs? **YES**

(2) If yes, whether the delinquent by misusing his posting as senior Judicial Officer, pressurized Mr.S.R. Jagtap, Civil Judge, J.D., to decide temporary injunction application in R.C.S. No.325 of 2003 in

favour of the plaintiffs by falsely representing him that plaintiffs are relatives of Hon'ble Shri Justice A.B. Palkar and District Judge Shri Ranade and thereby caused interference in the judicial work of Mr.S.R.Jagtap which amounts to misconduct and unbecoming of a Judicial Officer? **YES**

6. The complainant stated before the Enquiry Officer that while he was in his Court on 4/3/2003 Mr.Ashok Rawalkar, Peon attached to the Court of the petitioner entered his chamber at about 11 a.m. and informed him that the petitioner had called him to his (petitioner's) chamber urgently at 2 p.m. Mr.Jagtap informed the Peon that he would meet the petitioner after 5 p.m. and accordingly Mr.Rawalkar gave the said message to the petitioner while he was presiding over his Court. The petitioner in turn informed his peon Rawalkar to go back and tell Mr. Jagtap that the petitioner would not be available after 5 p.m. and Mr. Jagtap should meet him at 2 p.m. on 4/3/2003. This second message was conveyed to Mr.Jagtap around 12.30 p.m. while he was presiding over his Court and he, therefore, agreed to meet the petitioner at the given time. He came to

the chamber of the petitioner on the motorbike of his peon Shri Deshmane. As per Mr.Jagtap the petitioner conveyed him the message of Mr.Justice A.B. Palkar and District Judge Ranade to decide the application for temporary injunction in favour of the plaintiffs in RCS No.325/2003 which was filed by Parvez Ahamad Shaikh and another against one Avinash Kshirsagar and the Pune Municipal Corporation on 27/2/2003. Mr.Jagtap on 4/3/2003 itself heard the plaintiffs for ex-parte ad-interim relief and rejected the said prayer. The temporary injunction application was heard on 10/3/2003 and by the order dated 13/3/2003 it was rejected. As per Mr.Jagtap, the learned District Judge i.e. Shri R.C.Chavan had not resumed his duties at Pune and he was expected within two days and, therefore, Mr.Jagtap waited for him. Mr. Jagtap also informed Mr.S.P. Deshmukh the message given by the petitioner on 4/3/2003 immediately after he came out of the petitioner's chamber. Apparently the chamber of Mr.Deshmukh at the relevant time was in front of the chamber of the petitioner. On 17/3/2003 Mr.Jagtap contacted the learned District Judge and sought his appointment. However, the learned District Judge met Mr.Jagtap in his chamber at 10.30 a.m. and informed him that unless he put

his report in writing his request for transferring R.C.S.No.325 of 2003 to the file of any other Court could not be considered and, therefore, on 20/3/2003 Mr.Jagtap submitted his report in writing and also requested for transfer of RCS No.325 of 2003 from his file.

7. The evidence of Mr.Jagtap before the Enquiry Officer has been supported by two other witnesses viz. Ashok Rawalkar and Mrs.Nutan Khole. The learned District Judge in his preliminary enquiry had also recorded the statements of these witnesses. The report of the learned District Judge along with the statements of these witnesses was also placed before the Enquiry Officer and copies of the same were supplied to the petitioner. Both these witnesses in their examination-in-chief before the Enquiry Officer admitted the report they had made to the learned District Judge on 21/3/2003 and the same was reduced in writing as per the statements made by them. The evidence of Mr.Jagtap and these two witnesses clearly proves the events viz. (i) On 4/3/2003 at about 11 a.m. while Mr.Jagtap was sitting in his chamber Ashok Rawalkar conveyed to him the message of the petitioner to come to the petitioner's chamber at 2

p.m. Mr.Jagtap informed that he would meet the petitioner after 5 p.m. in his chamber and this was conveyed to the petitioner by Ashok Rawalkar while the petitioner was presiding over his Court. (ii) The petitioner was not happy that Mr.Jagtap would not meet him at 2 p.m. and, therefore, he sent Ashok Rawalkar to Mr.Jagtap with the second message that after 5 p.m. he would not be available and Mr.Jagtap should meet him at 2 p.m. in his chamber. (iii) The second message was also conveyed by Mr.Ashok Rawalkar to Mr.Jagtap at about 12.30 while Mr.Jagtap was presiding over his Court and Mr.Jagtap agreed to meet the petitioner at 2 p.m. (iv) Mr.Jagtap came to the petitioner's chamber as agreed as a pillion rider on the motorbike of his peon Shri Deshmane and met the petitioner. Thereafter he also met Mr.S.P. Deshmukh, another Additional District Judge whose chamber was just opposite to the chamber of the petitioner. (v) In the second half on 4/3/2003 the application for temporary injunction filed in RCS No.325/2003 came up before Mr.Jagtap for ex-parte ad-interim relief and after hearing the plaintiffs' Advocate, Mr.Jagtap declined to pass any ex-parte order (vi) the application for temporary injunction was heard on 10/3/2003 and it was rejected on

13/3/2003. On 13/3/2003 Mr.Jagtap asked the plaintiff whether he had approached anybody with a request to decide the application in his favour and the plaintiff replied that he did not approach any one but his brother had approached the petitioner for a favourable order on the application for temporary injunction.

8. We have no doubt in our mind, on having perused the oral testimony of these three witnesses examined in support of the charge, that the Enquiry Officer could not be faulted with in recording his findings against the petitioner. It is not necessary to take into consideration the reliance of the Enquiry Officer or his reference to the preliminary report submitted by the learned District Judge. Independent of this reference, we are satisfied that the charges against the petitioner have been duly proved in the departmental enquiry and the enquiry cannot be said to have been vitiated because the learned District Judge as well as the learned Additional District Judge were not examined before the Enquiry Officer

9. We have noted that the petitioner had taken a

specific defence and without any reasons he had sought to meet the learned District Judge on 20/3/2003. He was granted audience and at the end of the meeting when the learned District Judge called upon the petitioner to put in writing what he had stated during the meeting, the petitioner declined. Consequently the learned District Judge with the consent of the petitioner recorded in writing the gist of the discussions in which the petitioner stated before the learned District Judge that one boy by name Ashitosh had gone to his house in the morning around 10 a.m. on 4/3/2003 and this Ashitosh was not known to him but while he was in the bathroom this boy met his son and was asked to wait till the petitioner finished his bath. Thereafter the petitioner met this Ashitosh and enquired with him the reasons of his visit. Ashitosh told him that he had gone to the house of Mr.Jagtap as he was demanding money to pass an order in his favour but Mr.Jagtap was not available and, therefore, Ashitosh could not meet him. As the petitioner's house was in front of Mr.Jagtap's house, Ashitosh entered the house of the petitioner to convey the behaviour of Mr.Jagtap and when the petitioner met him at about 10.30 a.m. Ashitosh stated that Mr.Jagtap had

demanded money to pass a favourable order and this was unbecoming of a Judicial Officer. The petitioner purportedly assured Ashitosh to look into the matter and do the necessary. This story was sought to be supported by the evidence of Mr.Kazi, then In-charge District Judge on 4/3/2003 but with contradictions. Mr.Kazi also had met the learned District Judge on 21/3/2003 and the deliberations were reduced in writing. As per Mr.Kazi, Mr.Jagtap had met the petitioner in his house on 4/3/2003. This statement is totally contradictory to the events that had taken place on 4/3/2003. The petitioner himself admitted that Mr.Jagtap met him in his chamber at 2 p.m. on 4/3/2003 and that too on account of the two messages he had sent through Ashok Rawalkar, his peon. In addition this Ashitosh was not known to the petitioner, the petitioner did not ask him the case number, nor did he ask the parties' names and it is surprising that a person unknown to the petitioner is believed and Mr.Jagtap is called by the petitioner to his chamber to give him advice so as to refrain from any dishonest acts as allegedly told by Ashitosh. Undoubtedly this was a story fabricated by way of an afterthought and we have reasons to believe that as soon as the petitioner came to know that Mr.Jagtap

entered the chamber of Mr.S.P.Deshmukh on 4/3/2003, he was aware that Mr. Jagtap would inform Mr.Deshmukh the deliberation that had taken place in the petitioner's chamber and, therefore, he came out with a defence mechanism. Mr.Kazi the I/c. District Judge came as the defence witness of the petitioner in the domestic enquiry. As at present he has retired from the service and, therefore, we do not wish to make any further remarks on that point and in any case he is not before us.

10. Procedurewise we are satisfied that the enquiry was conducted in keeping with the principles of natural justice, sufficient opportunity was given to the petitioner to cross-examine the witnesses in support of the charge and to examine his own witnesses, a copy of the report of the Enquiry Officer was supplied to the petitioner along with the show cause notice, he submitted his reply to the show cause notice which was considered by the Disciplinary Committee of this Court along with the findings of the Enquiry Officer. Mr.Shah, the learned counsel for the petitioner submitted before us that the nature of charge was not so serious so as to warrant the capital punishment of compulsory retirement.

Having regard to the nature of the charges proved against the petitioner and his behaviour from 4/3/2003 till the conclusion of the disciplinary enquiry, more particularly the defence he took by levelling fabricated allegations against Mr.Jagtap, we do not agree that the punishment imposed is harsh or grossly disproportionate. In the case of High Court of Judicature at Bombay v. Shashikant S. Patil **[AIR 2000 SC 22]**, a three-Judge Bench considered the powers under Article 226 of the Constitution to interfere with the decision of the departmental authorities and stated thus:

> "... Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the

> authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the inquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution."

11. On the powers under Article 235 of the Constitution vested in the High Court for supervision and control over the subordinate judiciary, Their Lordships stated in Shashikant Patil's case (Supra),

> "...It is the constitutional duty of every High Court, on administrative side, to keep guard over the subordinate judiciary functioning within its domain. While it is

> imperative for the High Court to protect honest judicial officers against all ill conceived or motivated complaints, the High Court cannot afford to by-pass any dishonest performance of a member of the subordinate judiciary. Dishonesty is the stark antithesis of judicial probity. Any instance of a High Court condoning or compromising with a dishonest deed of one of its officers would only be contributing to erosion of the judicial foundation. Every hour we must remind ourselves that judiciary floats only over the confidence of the people in its probity. Such confidence is the foundation on which pillars of the judiciary are built."

12. The complainant was told to pass favourable order to the plaintiffs in the application for injunction in RCS No.325 of 2003 on 4/3/2003 by the petitioner in his chamber at about 2 p.m., is entirely a matter between the complainant and the petitioner, as no one else was present in the chamber at that time. Whether to accept the complainant's version or the petitioner's version is an issue which

will have to be judged on the preponderance of probabilities. The petitioner's version that he gave advice to the complainant based on the complaint he received from Ashitosh has to be outrightly rejected and for the contradictions between the petitioner's version and the statement of Mr.Kazi before the learned District Judge on 21/3/2003, that Mr. Jagtap met the petitioner in his house on 4/3/2003 in the morning. We have already held that the petitioner fabricated the story by way of an afterthought and as a defence mechanism.

. Now let us see the version of the complainant. His Court is located in the premises of the Pune Municipal Court, a few kilometres from the Shivaji Nagar Court premises where the petitioner had his Court. The injunction application in RCS No.325 of 2003 was to come up before the complainant on 4/3/2003 in the second session for ex-parte ad-interim relief and it did come up. The ex-parte order was refused after hearing the plaintiffs' Advocate. Mr.Ashok Rawalkar, the petitioner's Peon gave the petitioner's first message to the complainant and informed the petitioner that the complainant could not meet him at 2 p.m. but would

call on him after 5 p.m. The petitioner sent the peon second time to the complainant at about 12.30 hrs. and this time the complainant sent return message that he would meet the petitioner after 2 p.m. in his chamber. This is not disputed by the petitioner himself. What was the reason behind this urgency if it was not what the complainant complained of? Would the petitioner move with such urgency to give an elderly advice to the complainant? What was the reason that prompted the petitioner to make the purported report against the complainant to Mr. Kazi, the I/c. District Judge after 5 p.m. on 4/3/2003 itself? Was the petitioner aware that the complainant called on Mr. Deshmukh immediately after he met the petitioner and, therefore, he prepared a defence by purportedly reporting to Mr.Kazi? Why would Mr.Jagtap, who is a junior officer and neighbour of the petitioner file such a serious complaint against the petitioner and it is not the petitioner's case that Mr.Jagtap had a grudge or animosity against him? Why would Mr.Jagtap ask the plaintiff in the open Court on 13/3/2003 whether he had contacted any officer for a favourable order and the plaintiff replied that his brother had met the petitioner? These questions run writ large against

the petitioner and, therefore, the findings rendered by the Enquiry Officer holding that the charges were proved against the petitioner have been rightly accepted by the Disciplinary Committee. We find no reasons to take a different view.

. Retention of such a Judicial Officer would certainly shake the public confidence in the administration of justice system as such and the post facto behaviour of the petitioner was distressing, to say the least. He has been rightly visited with the marching orders in the form of compulsory retirement by way of punishment. We do not find the punishment to be unjust, unreasonable or unwarranted having regards to the seriousness of the charges. A Judicial Officer's acts of omission and commission invite stricter scrutiny than any other public servant and the High Court must not in discharge of its Constitutional duty under Article 235 show any leniency against such acts as the petitioner has been found guilty for. Hence any other milder punishment would send wrong signals to the Bench, Bar and the litigants. We, therefore, do not find any reason to interfere with the impugned order of punishment.

13. In the result, this petition fails at the threshold and the same is hereby rejected summarily.

(NARESH H. PATIL,J.) (B.H.MARLAPALLE